

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.19 OF 2019

Kishori Lawanis,
Widow of Ranganath Kamat,
alias Kishori Ranganath Kamat,
Resident of Housing Board Colony,
Bicholim-Goa.

...Appellant

Versus

State of Goa
Through the Executive Engineer,
Division XXIII, PWD,
Bicholim-Goa.

...Respondent

Mr. Joaquim Godinho, Advocate for the Appellant.
Ms. Neha Kholkar, Additional Government Advocate for the
Respondent.

CORAM: M. S. SONAK, J.

DATE : 7th APRIL 2022

ORAL JUDGMENT :

1. I heard Mr. J. Godinho, learned Counsel for the Appellant, and Ms. Neha Kholkar learned Additional Government Advocate for the respondent.

2. The appellant challenges the judgment and award dated 19.10.2018, made by the Reference Court in Land Acquisition Case no.20/2012, dismissing the reference seeking enhancement of compensation.

3. By a notification dated 16.11.2006 issued under Section 4 of the Land Acquisition Act, 1894 (said Act), the State initiated acquisition to realign MDR-21 between Bicholim to Mayem near Dempo Mining Corporation Screening Plant at Bicholim, Goa. The Appellant's property admeasuring 19813 sq. mtrs. surveyed under no.82/1 (part), 89 (part), and 96 (part) of village Mayem, Taluka Bicholim, were proposed to be acquired. The Land Acquisition Officer determined the rate at ₹175/- per sq. mtr. The Appellant's reference claiming the enhancement to ₹2,500/- per sq. mtr. was rejected by the Reference Court by the impugned judgment and award. Hence, the present appeal.

4. Mr. Godinho, learned Counsel for the Appellant, submits that three sale deeds were produced based upon which the market rate should have been assessed at least at ₹320/- per sq. mtr. after making deductions of almost 60%. He submits that the evidence about the amenities enjoyed by the acquired property was virtually unchallenged. He submits that the acquired lands were within the Bicholim municipal area, in a settlement zone close to tourist spots like Mayem lake. The acquired property was also very close to Heera Talkies, hospitals, electricity department, temples, schools, colleges, etc. The Reference Court has glossed over all this evidence.

5. Ms. Neha Kholkar learned that the Additional Government Advocate contends that the impugned award was based on its reasoning. She submits that none of the sale deeds were comparable instances because there is no clarity about the distance of the sale deed plots from the acquired land. She submits that, in any case, the sale deeds were in respect of areas of

120, 42.48, and 330 sq. mtrs. The sale deeds were in respect of developed and converted plots. In contrast, the acquired land is quite large, i.e., 19813 sq. mtrs. and the same was undeveloped. She submits that the acquired lands abut the mining leases, and on account of the dust pollution in the area, there was no building potential. She, therefore, submits that this appeal is liable to be dismissed.

6. Mr. Godinho, by way of a rejoinder, points out that the Appellant, who examined herself as AW1, had produced on record the award of the LAO dated 12.12.1990. He referred to the sale statistics in the said award and observed that the area's rate would come to ₹693.50 per sq. mtr. He also pointed out how the LAO based only on a local inquiry conducted through the Talathi arrived at the figure of ₹175/- per sq. mtr. Mr. Godinho, therefore, submitted that the minimum rate to be determined in this case would be ₹320/- per sq. mtr. even after a deduction of 60% from the rate of ₹800/- per sq. mtr. they were computed based on the Sale Deeds at Exhibits 22,23 & 24.

7. Ms. Kholkar, relying on *Chimanlal Hargovinddas V/s. Special Land Acquisition Officer and Anr.*¹ submitted that the reference under Section 18 is not an appeal against the award of the LAO, and the material relied upon by the LAO cannot be considered unless the same is produced and proved before the Reference Court.

8. The rival contentions now fall for determination.

¹ (1988) 3 SCC 751

9. In this case, by the impugned award, the Reference Court has rejected the reference and maintained the rate of ₹175/- per sq. mtr. in respect of the acquired property.

10. In this, the Reference Court completely ignored the unchallenged evidence about the property's location and the amenities enjoyed. AW1 Smt. Kishori, who was almost 82 years old when she deposed before the Court, stated that the acquired land is within the Bicholim Municipal area and close to important tourist spots like Mayem lake. She also deposed that the theatre Hira Talkies, hospitals of Caiero and Kansar, electricity department, Datta Mandir were at a distance of hardly 50 to 75 meters from the acquired land. She also deposed that the central market, schools, colleges, municipality, judicial courts, church, bus stand, etc., were within 400 to 500 meters from the acquired land. Except for some suggestions, this evidence has stood the cross-objection.

11. AW1 initially denied that the acquired property is close to mining areas but later admitted that mining operations take place close to the acquired land. This witness also deposed that the acquired land falls within the settlement zone. AW1 produced several sale deeds out of which Mr. Godinho placed specific reliance on Exhibits 22, 23 & 24. Now, these sale deeds, as was correctly pointed out by Ms. Neha Kholkar, cannot be of much assistance to the Appellant because they concern very small plots admeasuring 120, 42.48, and 330 sq. mtrs. Besides, evidence suggests that these were developed and converted plots. There is also no clarity about the distance between these plots and the acquired property though the plots also appear to be within the

jurisdictional limits of Bicholim itself. The rate of about ₹800/- per sq. mtr. reflected in these sale deeds will not afford much assistance for determining the market rate of the acquired property because there is no evidence that the acquired property was developed. Besides, the acquired property was reasonably larger than these sale deed plots.

12. The Appellant also examined Mr. Ramesh Sazo Gauns, a retired teacher as AW2. This witness has also reiterated that the acquired property is within 400 to 500 mtrs. from the central market, schools, colleges, municipalities, judicial courts, churches, bus stand, etc. He also deposed that residential houses were within about 50 mtrs. from the year 2006 itself and, therefore, the acquired property had the potential for residential and commercial development. In his cross-examination, he stood his ground substantially. He deposed that the acquired property was not an agricultural area but a rocky and plain area and denied the suggestion that construction in this area was impossible.

13. The respondents examined Mr. Pradeep Naik as RW1, the Deputy Collector and LAO Officer of Bicholim Taluka. This witness stressed that the acquired property is abutting mining leases on both sides, and the acquired land is uncultivable and has dry crops. Therefore, the LAO concluded that the “*construction value is very less.*” He admitted that the rate awarded by the LAO is based on the site inspection report and the nature of the land. This is, however, contrary to what the LAO has stated in the award, namely that he determined the rate only based on a local inquiry by the Talathi.

14. The LAO also deposed that since the acquired land is abutting the mining lease with a lot of dust and air pollution, there is no building potential. The LAO also distinguished the three sale deeds relied upon by the Appellant by pointing out that they were in respect of small and developed plots within the settlement zone.

15. Now, considering the totality of the evidence on record, it does appear that the Reference Court has completely glossed over the evidence about the location of the acquired property and its proximity to several essential amenities like markets, courts, commercial establishments, and temples, schools, etc. Furthermore, the Reference Court has also glossed over the evidence about the presence of residential and commercial establishments very close to the acquired property, the proximity to Mayem lake, which is itself a touristic destination. Thus, even though the Reference Court might have been justified in not going by the sale deeds produced by the Appellant, there was no reason to ignore all this unchallenged evidence on record completely.

16. The Respondent's witness, that is, the LAO himself, on the one hand, speaks about the lands being uncultivable and yet proceeds to conclude the absence of any building potential. Even the contention about the lands having lesser building potential on account of their proximity to mining leases cannot be entirely accepted because lands close to mining leases cannot be thereby declared valueless. The lands close to mining leases will also enjoy certain added benefits, mainly because it is not unknown that

such lands have demand from the mining lessees for either expansion or ancillary activities.

17. Ms. Kholkar is quite justified in contending that the reference under Section 18 of the Land Acquisition Act is not an appeal against the award of the LAO and, therefore, the Court cannot take into account the material relied upon by LAO in his award unless the same is produced and proved before the Court. So also, the proceedings in reference are not an appeal against the award of the LAO as it is merely an offer of the LAO. But in this case, the Appellant produced the award in evidence. Even the LAO examined himself and referred to the very same award. Therefore, without deviating from the principle laid down in *Chimanlal Hargovinddas* (supra), it is not as if no observation can be made on the reasoning of the LAO in the award.

18. The LAO, in his award, refers to the sale statistics provided to him by the Mamlatdar and, based thereon, also refers to a rate of ₹693.60 per sq. mtr. The LAO then says that this is not relevant in the present case and proceeds to rely on the local inquiry through the Talathi of Bicholim to abruptly arrive at the rate of ₹175/- per sq. mtr. Based only on this reasoning, the LAO proceeded to offer ₹175/- per sq. mtr.

19. Even if the above reasoning and the evidence in LAO's award are wholly ignored, the evidence before the Reference Court warrants some enhancement. This evidence speaks about the location and the locational advantages of the acquired property. This, apart from the other evidence, calls for enhancement up to ₹200/- per sq. mtr.

20. Therefore, this appeal is partly allowed, and the rate is now determined at ₹200/- per sq. mtr. The Appellant will be entitled to all statutory benefits, like solatium, interest, etc.

21. The respondents are directed to deposit the differential amount proportionate to the Appellant's share of 649.25 sq. mtrs. within two months from today in this Court with necessary intimation to the learned Counsel for the Appellant. Once this amount is deposited, the Appellant will be at liberty to withdraw the same by furnishing necessary identification papers and bank details so that the Registry can directly deposit this amount in the Appellant's bank account.

22. The appeal is partly allowed without any order for costs.

M. S. SONAK, J.

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